

## **CORRECTIONS**

### **STATE PAROLE BOARD**

#### **Parole Board Rules**

#### **Definitions, Records Designated Confidential, Access to Government Records and Computation of Time**

**Adopted Amendments: N.J.A.C. 10A:71-2.1, 3.9, 3.13, 3.15, 3.18, 3.20, 3.27, 3.30, 3.32, 3.37,  
3.41, 3.43, 3.46, 3.48, 3.52, 3.53, 5.7, 5.8, and 7.18 and 10A:72-9.7 and 9.13**

**Adopted New Rules: N.J.A.C. 10A:71-2.1, and 2.3 through 2.7**

Proposed: August 15, 2011 at 43 N.J.R. 2144(b).

Adopted: November 30, 2011 by the New Jersey State Parole Board, James T. Plousis, Chairman  
and with the approval of Gary M. Lanigan, Commissioner, Department of Corrections.

Filed: January 12, 2012 as R.2012 d.033, **without change**.

Authority: N.J.S.A. 30:4-123.48(d), 47:1A-1, and 52:17B-4; and Executive Order No. 9 (1963).

Effective Date: February 6, 2012.

Expiration Dates: October 27, 2017, N.J.A.C. 10A:71; and

June 15, 2013, N.J.A.C. 10A:72.

#### **Summary of Public Comments and Agency Responses:**

The official comment period expired on October 14, 2011. In response to the notice of proposal, the State Parole Board received comments from Melinda S. Haley, Special Legal Advisor, Office of the Commissioner, Department of Corrections, and Joseph E. Krakora, Public Defender, Office of the Public Defender. The comments and agency responses are as follows:

COMMENT: Ms. Haley advised that the proposed rule action does not impact on the Department of Corrections (Department); that the proposed amendments and new rules pertain to records

designated confidential, and access to government records and that therefore, the Department has no comment on the proposed rulemaking.

RESPONSE: The State Parole Board appreciates Ms. Haley's advisement that the Department of Corrections, upon review of the notice of proposal, has no comment on the proposed rulemaking.

COMMENT: Mr. Krakora advised that the Public Defender's Office takes no position on the proposed rules and amendments.

RESPONSE: The State Parole Board appreciates Mr. Krakora's advisement that the Office of the Public Defender takes no position on the proposed new rules and amendments.

### **Federal Standards Statement**

A Federal standards analysis is not required because the adopted amendments and new rules are not subject to any Federal standards. The Federal Freedom of Information Act, 5 U.S.C. §§ 550a et seq., does not apply to records of State government and does not constitute a Federal standard.

**Full text** of adoption follows:

#### CHAPTER 71 PAROLE

#### SUBCHAPTER 2. RECORDS; GENERAL ADMINISTRATIVE PROVISIONS

##### 10A:71-2.1 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings unless the context clearly indicates otherwise.

"Access" shall mean granting a requester the opportunity to inspect, examine or obtain a copy of a government record.

"Anonymous" shall mean a requester of records who does not provide their name or provides only an e-mail address.

"Custodian" or "custodian of records" shall mean the employee of the Board designated by the Chairperson to administer the provisions of the Open Public Records Act, N.J.S.A. 47:1A-1 et

seq.

"Fee" shall mean any amount due including the cost of copies of government records, special service charge, service charge and postage.

"Government record" or "record" shall mean any paper, written or printed book, document, drawing, map, plan, photograph, microfilm, data processed or image processed document, information stored or maintained electronically or by sound-recording or in a similar device, or any copy thereof, that has been made, maintained or kept on file in the course of the Board's official business by any employee or member of the Board, or that has been received in the course of the Board's official business by any employee or member of the Board. The terms shall not include inter-agency or intra-agency advisory, consultative or deliberative material.

"Medium" shall mean the generic form in which a government record is maintained; that is, paper, computerized form or microfilm. With respect to records in computerized form, the medium is related to the type of device on which the record is stored, for example, diskette, hard-drive, storage tape, etc.

"Special charge" shall mean a charge to the requester in addition to the cost of duplicating records that are converted from one medium to another that is reasonable and based on the cost for any extensive use of information technology, or for the labor cost of personnel providing the service that is actually incurred by the Board or attributable to the Board for the programming, clerical and supervisory assistance required, or both.

"Special service charge" shall mean a charge to a requester that is reasonable and based upon the actual direct cost of providing the copy or copies of records, or access to inspect or examine records.

#### 10A:71-2.2 Records designated confidential

(a) In addition to records designated as confidential pursuant to the provisions of N.J.S.A. 47:1A-1 et seq., any other law, rule promulgated under the authority of any statute or Executive Order of the Governor, resolution of both houses of the Legislature, Executive Order of the Governor, Rules of Court or any Federal law, Federal regulation or Federal order, the following records shall be deemed confidential and shall not be subject to public access:

1. Information, files, documents, reports, records or other written materials concerning an offender's medical, psychiatric or psychological history, diagnosis, treatment or evaluation;
2. Information, files, documents, reports, records or other written materials concerning an offender's alcohol, drug or other substance abuse evaluation, history and/or treatment;
3. Information, files, documents, reports, records or other written materials that, if disclosed, would infringe or jeopardize privacy rights of the offender or others or endanger the life or physical safety of any person;

4. Investigative reports or information, including those from informants that, if disclosed, would impede ongoing investigations, create a risk of reprisal, or interfere with the security or orderly operation of an institution or a community program;

5. Investigative reports or information compiled or intended for law enforcement purposes that, if disclosed, would impede ongoing investigations, interfere with law enforcement proceedings, constitute an unwarranted infringement of personal privacy, reveal the identity of a confidential source or confidential information furnished only by a confidential source, reveal investigative techniques and procedures or endanger the life or physical safety of law enforcement personnel, confidential informants, victims or witnesses;

6. Information, files, documents, reports, records or other written materials that, if disclosed, would impede Board functions by discouraging persons from providing information to the Board;

7. An electronic recording or a transcript, if prepared, of any proceeding of the Board;

8. (No change in text.)

9. A record that consists of information, statement or testimony in written, audio or video form provided by a victim or, if the victim is deceased, the nearest relative of the victim. This shall include, but not be limited to, any information obtained pursuant to N.J.A.C. 10A:71-3.48, Victim registration, the continuing notice and the extent of any physical harm or psychological or emotional harm or trauma suffered by the victim, the extent of any loss of earnings or ability to work suffered by the victim, the continuing effect of the crime upon the victim's family, personal information pertaining to the victim or victim's family such as the victim's home address, home telephone number, work or school address, work telephone number, social security account number, medical history or any other identifying information unless the requested information, statement or testimony in written, audio or video form was given at a public proceeding.

Recodify existing (c)-(e) as (b)-(d) (No change in text.)

#### 10A:71-2.3 Designation of custodian of records

(a) The Chairperson shall designate a custodian of records for the Board, who shall be responsible for accepting and processing requests for access to government records of the Board.

(b) The address and other contact information for the custodian of records shall be posted on the Board's website, [www.state.nj.us/parole](http://www.state.nj.us/parole), and otherwise made available to the public. The contact information is as follows:

Title:	Custodian of Records
	State Parole Board
Street Address:	171 Jersey Street, Building #2

Mailing Address: Trenton, New Jersey 08611  
PO Box 862  
Trenton, New Jersey 08625-0862

#### 10A:71-2.4 Requests for government records

(a) All requests for access to government records of the Board pursuant to N.J.S.A. 47:1A-1 et seq. shall be in writing on a form that meets the requirements of N.J.S.A. 47:1A-5(f) and is adopted by the custodian of records.

(b) The requester shall be requested to provide the following information on the form:

1. The name, address and telephone number of the requester;
2. A description of the government record sought, method of access and if copies are sought, the medium requested and mode of delivery; and
3. The signature of the requester and the date submitted to the custodian of records.

(c) Copies of the request form shall be available at the office of the custodian of records, all district parole offices and on the Board's website.

(d) An anonymous request may be submitted; however, if information necessary to the fulfillment of the request is not provided, the request shall not be considered a valid request until the requester provides such information.

#### 10A:71-2.5 Procedures for submitting and fulfilling requests

(a) Request forms may be hand-delivered during normal business hours of the Board, mailed or transmitted electronically by the requester to the custodian of records.

(b) Any member or employee of the Board who receives a request for access to a government record shall direct the requester to submit the request to the custodian of records.

(c) Upon receipt of a request form, the custodian of records shall review the request form for clarity and completeness. If the request form is unclear as to the government record requested, the custodian shall advise the requester of the deficiency, provided contact information is included on the form. The custodian may require the requester to provide additional information to identify the record or to ascertain the requester's identity and status to determine whether access is authorized. The custodian may deny a request for access if the request is unclear or incomplete after attempting to reach a reasonable resolution with the requester.

(d) Upon receipt of a request form, the custodian of records shall estimate the fee of providing the records.

(e) The custodian of records may impose a special charge to fulfill a request that requires the

conversion of a government record to a medium not routinely used by the Board, not routinely developed or maintained by the Board or that requires a substantial amount of manipulation or programming of information technology.

(f) The custodian of records may impose a special service charge to fulfill an extraordinary request to inspect or examine records.

(g) When responding to the request, the custodian of records shall sign and date the request form, enter the estimated fee and, if applicable, tracking number and provide the requester with a copy. If access to a record is denied, the custodian shall explain in writing the reason for the denial on the form or an attachment.

(h) The custodian of records shall notify the requester when the records are available.

(i) The custodian of records shall collect any fee due to prior to delivery of the copies of records. Payment shall be made by cash, check or money order payable to the State of New Jersey. When payment is made by cash, the exact amount shall be required.

#### 10A:71-2.6 Timeliness of response

(a) The custodian of records shall grant or deny access within seven business days after receiving a request completed in accordance with N.J.A.C. 10A:71-2.4 or such additional time as may be authorized by law or this subchapter or as may be agreed to by the requester.

(b) If the record is in storage or archived, the requester shall be so advised within seven business days after the custodian of records receives the request. The requester shall also be advised by the custodian when the record can be made available.

(c) The calculation of business days shall begin on the first business day following receipt of the completed request by the custodian and shall end at the close of business on the seventh business day.

(d) The failure to respond to a request in a timely manner shall be deemed a denial of the request.

#### 10A:71-2.7 Fees for copies

(a) The costs for providing a government record shall be that set forth in N.J.S.A. 47:1A-1 et seq.

(b) Unless a special charge is required to fulfill a request for records that are maintained electronically, only the cost of the medium used by the Board to reproduce records shall be charged. Access to electronic records and non-printed material shall be provided free of charge.

(c) Whenever charges are imposed for a special service charge, a special charge or medium pursuant to (b) above, the requester shall be given the opportunity to review and object to the charge prior to it being incurred. If the requester objects to the charge and refuses to withdraw

the request, the custodian of records may deny the request after attempting to reach a reasonable solution that accommodates the interests of the requester and the Board.

Recodify existing 10A:71-2.2 through 2.5 as 10A:71-2.8 through 2.11 (No change in text.)

### SUBCHAPTER 3. PAROLE RELEASE HEARINGS

#### 10A:71-3.9 Inmate statements; adult inmates

(a) It shall be the responsibility of the chief executive officer to provide each inmate with a copy of the report filed on his or her case pursuant to N.J.A.C. 10A:71-3.7 at the time such report is filed with the Board panel, except information classified as confidential pursuant to N.J.A.C. 10A:71-2.2 or the rules and regulations of the Department.

(b)-(c) (No change.)

#### 10A:71-3.13 Parole hearing procedures; adult inmates

(a)-(c) (No change.)

(d) All such evidence not classified as confidential pursuant to N.J.A.C. 10A:71-2.2 or the rules and regulations of the Department shall be disclosed to the inmate.

(e)-(f) (No change.)

(g) The inmate shall have the right to be aided by a Board representative pursuant to N.J.A.C. 10A:71-2.11.

(h)-(m) (No change.)

#### 10A:71-3.15 Initial hearing and case review notice of decision; adult inmates

(a)-(c) (No change.)

(d) Such case assessment shall consist of the hearing officer's determination and the reasons therefor, except information classified as confidential pursuant to N.J.A.C. 10A:71-2.2 or the rules and regulations of the Department.

(e) (No change.)

#### 10A:71-3.18 Board panel hearing; notice of decision for adult inmates

(a)-(e) (No change.)

(f) Such notice shall consist of the decision of the Board panel, and, if the Board panel's decision is to deny parole or defer decision, the notice shall contain the reasons therefor, except

information classified as confidential pursuant to N.J.A.C. 10A:71-2.2 or the rules and regulations of the Department.

#### 10A:71-3.20 Board hearing; notice of decision for adult inmates

(a)-(d) (No change.)

(e) Such notice shall consist of the decision of the Board and, if the Board's decision is to deny or defer decision, the notice shall contain the reasons therefor, except information classified as confidential pursuant to N.J.A.C. 10A:71-2.2 or the rules and regulations of the Department.

#### 10A:71-3.27 Quarterly review procedures; juvenile inmates

(a)-(c) (No change.)

(d) Prior to the evaluation segment of the quarterly review, a designated Board representative, the hearing officer or the juvenile Board panel member(s) shall discuss with and explain to the juvenile inmate all documents relevant to the juvenile inmate's case, except information classified as confidential pursuant to N.J.A.C. 10A:71-2.2 or the rules and regulations of the Commission.

#### 10A:71-3.30 Board member review; juvenile inmates

(a) (No change.)

(b) A written report shall be filed with the juvenile Board panel within 21 days of the decision and shall consist of the determination of the juvenile Board panel member and the reasons therefor, except that information classified as confidential pursuant to N.J.A.C. 10A:71-2.2 or the rules and regulations of the Commission. A copy of such notice shall be forwarded to the juvenile inmate, the juvenile's parent(s) or guardian(s), the committing court, the prosecutor and the chief executive officer of the institution or designee. The chief executive officer or designee may further distribute the report as deemed appropriate.

(c)-(d) (No change.)

#### 10A:71-3.32 Juvenile Board panel case reviews

(a)-(g) (No change.)

(h) The juvenile Board panel shall file a report of such case review within 21 days with the Board, the Commission, the committing court, the prosecutor, the chief executive officer of the institution or designee, the juvenile inmate and the juvenile's parents or guardians. Such report shall consist of the decision of the panel and the reasons therefor, except information classified as confidential pursuant to N.J.A.C. 10A:71-2.2 or the rules and regulations of the Commission. The chief executive officer or designee may further distribute the report as deemed appropriate.



(i)-(j) (No change.)

10A:71-3.37 Inmate statements: county inmates

(a) It shall be the responsibility of the chief executive officer of the institution or designee to provide each inmate with a copy of the report filed pursuant to N.J.A.C. 10A:71-3.36 at the time such report is filed with the designated hearing officer or Board panel, except such information classified as confidential pursuant to N.J.A.C. 10A:71-2.2 or by the chief executive officer of the institution.

(b) (No change.)

10A:71-3.41 Parole hearing procedures: county inmates

(a) (No change.)

(b) All information not classified as confidential pursuant to N.J.A.C. 10A:71-2.2 or by the chief executive officer of the institution shall be disclosed to the inmate.

10A:71-3.43 Initial hearing notice of decision; county inmates

(a)-(b) (No change.)

(c) Such case assessment shall consist of the hearing officer's determination and the reasons therefor, except information classified as confidential pursuant to N.J.A.C. 10A:71-2.2 or by the chief executive officer of the institution.

(d) (No change.)

10A:71-3.46 Board panel hearing; notice of decision for county inmates

(a)-(b) (No change.)

(c) Such notice shall consist of the decision of the Board panel, and, if the Board panel's decision is to deny parole or defer decision, the notice shall contain the reasons therefor, except information classified as confidential pursuant to N.J.A.C. 10A:71-2.2 or by the chief executive officer of the institution.

10A:71-3.48 Victim input

(a) Any victim injured as a result of a crime of the first or second degree or the nearest relative of a murder/manslaughter victim shall be entitled to present a written or videotaped statement for the parole report, filed pursuant to N.J.A.C. 10A:71-3.7, to be considered during the parole hearing process, to present testimony to a senior hearing officer designated by the Board panel, to present testimony to the Board panel or to present testimony to the Board, if a hearing is

conducted pursuant to N.J.A.C. 10A:71-3.19, concerning the victim's harm. Upon the request of a victim or the nearest relative of a murder/manslaughter victim or at the discretion of a Board panel or the Board, a copy of the parole report, except information, documents, reports, records or other written materials deemed confidential pursuant to N.J.A.C. 10A:71-2.2, prepared pursuant to N.J.A.C. 10A:71-3.7 shall be provided to the victim or the nearest relative of a murder/manslaughter victim.

(b)-(n) (No change.)

(o) Any and all statements or testimony of the victim or nearest relative of a murder/manslaughter victim submitted to the Board pertaining to the continuing nature and extent of any physical harm or psychological or emotional harm or trauma suffered by the victim, the extent of any loss of earnings or ability to work suffered by the victim and the continuing effect of the crime upon the victim's family shall be deemed confidential pursuant to N.J.A.C. 10A:71-2.2.

(p)-(r) (No change.)

10A:71-3.52 Interstate corrections compact and serving time out-of-State (s.t.o.s.) cases

(a)-(e) (No change.)

(f) Information, files, documents, reports, records or other written material submitted to the Board by an out-of-state or Federal institutional authority shall be deemed confidential as specified in N.J.A.C. 10A:71-2.2. The Board, however, shall maintain the confidentiality of any information, files, documents, reports, records or other written material as specified by the out-of-state or Federal institutional authority.

(g)-(r) (No change.)

10A:71-3.53 Medical parole

(a)-(m) (No change.)

(n) If, after review of a medical diagnosis required under (m) above, the Board panel determines that a parolee released on medical parole is no longer so debilitated or incapacitated by a terminal condition, disease or syndrome as to be physically incapable of committing a crime, the parolee shall be returned to confinement in an appropriate facility designated by the Commissioner.

1. A decision to return the parolee to confinement shall be rendered only by the Board panel after a hearing conducted by the Board panel or by a hearing officer designated by the Chairperson.

i.-iii. (No change.)

iv. Within 21 days of the hearing, the appropriate Board panel shall issue a written decision to

the parolee, which shall include the decision of the Board panel and the particular reasons for the decision and the facts relied on, except information classified as confidential pursuant to N.J.A.C. 10A:71-2.2.

2. (No change.)

(o)-(q) (No change.)

## SUBCHAPTER 5. SUSPENDING OR RESCINDING A PAROLE RELEASE DATE

### 10A:71-5.7 Parole rescission hearing; notice of hearing

(a) Upon the initiation of the rescission hearing process, the inmate shall be provided with written notification of the reasons for the hearing, the purpose of the hearing and the information and material to be considered at the hearing, except information classified as confidential pursuant to N.J.A.C. 10A:71-2.2 or the rules of the Department or Commission.

(b) Such notification shall inform the inmate of the following rights to which he or she shall be entitled at the rescission hearing:

1.-2. (No change.)

3. The right to present witnesses to testify in his or her behalf as to matters relevant to the hearing in accordance with N.J.A.C. 10A:71-2.10.

4.-6. (No change.)

7. The right to disclosure of adverse information except as provided in N.J.A.C. 10A:71-2.2 or the rules and regulations of the Department or Commission.

(c) When a rescission hearing is conducted pursuant to N.J.A.C. 10A:71-3.48(n)1iii, any and all statements or testimony of the victim or nearest relative of a murder/manslaughter victim submitted to the Board pursuant to N.J.A.C. 10A:71-3.48 and the identity of the person submitting such statements or testimony shall be deemed confidential pursuant to N.J.A.C. 10A:71-2.2. Further, confrontation and cross-examination of the person providing statements or testimony to the Board pursuant to N.J.A.C. 10A:71-3.48 shall not be permitted.

### 10A:71-5.8 Parole rescission hearing; notice of decision

(a) (No change.)

(b) If the rescission hearing is conducted by a hearing officer, the hearing officer shall prepare a written summary of the rescission hearing.

1. Such hearing summary shall be forwarded to the Board or appropriate Board panel, and a copy of the summary shall be forwarded to the inmate's attorney or directly to the inmate where he or

she has appeared pro se, in order that the inmate or his or her attorney may object or comment on the hearing summary by submitting written exceptions to the hearing summary. Such exceptions shall be forwarded to the Board or Board panel within 14 days after the receipt of the hearing summary. The provisions of N.J.A.C. 10A:71-2.2 shall be applicable to any hearing summary provided to the inmate.

2.-3. (No change.)

(c)-(d) (No change.)

## SUBCHAPTER 7. REVOCATION OF PAROLE

### 10A:71-7.18 Revocation hearing; notice of decision

(a) (No change.)

(b) Such Notice of Decision shall consist of:

1. (No change.)

2. The particular reasons for the decision and the facts relied upon, except information classified as confidential pursuant to N.J.A.C. 10A:71-2.2; and

3. (No change.)

## CHAPTER 72

## DIVISION OF PAROLE

## SUBCHAPTER 9. VOLUNTEERS IN PAROLE PROGRAM (V.I.P.P.)

### 10A:72-9.7 Volunteer responsibilities

(a) All volunteers shall agree to abide by the following rules:

1.-2. (No change.)

3. The volunteer shall not discuss Division of Parole business with unauthorized persons, and shall maintain confidentiality of information in accordance with N.J.A.C. 10A:71-2.2;

4.-11. (No change.)

### 10A:72-9.13 Curtailing, suspending or discontinuing the services of a volunteer

(a) The District Parole Supervisor may curtail, suspend or discontinue the services of a volunteer for reasons that include, but are not limited to:

1. Any breach of confidentiality (N.J.A.C. 10A:71-2.2, Records designated confidential);
- 2.-6. (No change.)